

OPINION
47-80

May 1, 1947 (OPINION)

COURTS

RE: County Judge - Fees - Sec. 14-0322-11-1014

Your letter of April 24, addressed to this office has been received and contents noted.

You state there has been disagreement among the county judges of the state as to whether or not under sections 14-0322 and 11-1014 the \$1.00 marriage license fee should be paid to the county treasurer.

Section 14-0322 provides among other things as follows: "For each license and the record herein required, the county judge shall be entitled to a fee of one dollar to be paid by the party applying for the license." The foregoing has been the law in this state since 1985.

The law with reference to salaries was amended by the initiated measure approved in June, 1932, and is found in the Session Laws of 1933, on page 497, and that part applicable here is found in North Dakota Revised Code of 1943, section 11-1014. This section reads as follows:

"FEES RECEIVED BY COUNTY OFFICERS TURNED OVER TO COUNTY TREASURER. The salaries fixed by this chapter shall be full compensation for all county officials, deputies, clerks, and assistants, respectively, and all fees and compensation received by any official, deputy, clerk, or assistant for any act or service rendered in his official capacity, shall be accounted for and paid over monthly to the county treasurer and be credited to the general fund of said county, except that such official, deputy, clerk, and assistant shall be entitled to retain such fees as now are allowed to him and permitted by law or as may be hereafter permitted and allowed."

You will note that under the statute quoted all fees and compensation received by any county official, etc, for any act or service rendered in his official capacity shall be accounted for a paid over monthly to the county treasurer.

Under the statutes of the state a judge of the county court is the only official in the county who has the authority and whose duty it is to issue marriage licenses. It would appear, therefore, that when a county judge issues a marriage license he does so in his official capacity and that being true he would be required to account for the one dollar fee fixed by the statute for such service.

I assume you are familiar with the case Re. Peschel, 72 N.D. 14. On page 20 of the report, you find the following language: "In this state it is the general rule that fees received by county officials for the performance of acts that are wholly voluntary and are not a part of their official duties may be retained by the officers as

their individual remuneration for the services rendered."

However, in the case of Dickey County vs. James M. Austin, 61 N.D. 309, the court held under the provisions of chapter 112 of the Session Laws of 1915, that the county judge was required to pay at the end of each month into the general fund of the county all money received as fees of every nature, kind and description. I believe that the same construction is applicable to section 11-1014 because the language is almost identical in that it requires every official to cover into the county treasurer all fees and compensation in his official capacity.

That case holds, however, that the county judge is entitled to retain fees charged for certifying copies since it is not his official duty to furnish same.

It is the opinion of this office, that the fees charged by a county judge for issuing a marriage license must be covered into the county treasurer under section 11-1014.

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